

NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION
BUREAU OF RISK MANAGEMENT, INITIAL NOTICE & CASE ASSIGNMENT- ISRA SECTION
P.O.BOX 432, TRENTON, NJ 08625-0432

INDUSTRIAL SITE RECOVERY ACT
APPLICABILITY/NONAPPLICABILITY AFFIDAVIT

Please note that the filing of this affidavit is a voluntary act and is not required by statute or regulation. The processing of these affidavits is a service provided by the Department of Environmental Protection (Department) to assist the citizens of the State in understanding the requirements of ISRA. Further, written applicability determinations issued as a result of this filing simply answers the question does the Industrial Site Recovery Act apply to my site. In addition, ISRA applicability determinations make no representation as to the environmental condition of the site and are not a substitute for the appropriate inquiry into a site prior to acquisition for the purposes of an innocent purchaser defense pursuant to the New Jersey Spill Compensation and Control Act (N.J.S.A. 58:10-23.11g).

The Industrial Site Recovery Act, (ISRA) N.J.S.A. 13:1K-6 et seq., applies **only** to **Industrial Establishments**, which are specific classifications of business operations as detailed below and at N.J.A.C. 7:26B-1.4. ISRA applies to an Industrial Establishment **only** when specific transactions occur as defined at N.J.A.C. 7:26B-1.4, i.e. **“Change of ownership,” “Closing operations” or “Transferring ownership or operations.”**

A place of business is an **Industrial Establishment** if it meets **all** of the following criteria:

1. The place of business must have a North American Industrial Classification System (NAICS) Number listed at N.J.A.C. 7:26B, Appendix C (* *See ISRA Resources Next Page.*) *and*;
2. The place of business must have been engaged in operations on or after December 31, 1983; *and*;
3. The place of business must involve the generation, manufacture, refining, transportation, treatment, storage, handling or disposal of hazardous substances or hazardous wastes as defined at N.J.A.C. 7:1E. Hazardous Substances are defined as all petroleum and petroleum products, pesticides and solvents and all substances listed in Appendix A of N.J.A.C. 7:1E. (* *See ISRA Resources Next Page.*)

If the business in operation at the site does not meet all three criteria, then it is not an Industrial Establishment and, therefore, ISRA does not apply. For the full definition of “Industrial Establishment,” see N.J.A.C. 7:26B-1.4.

Common transactions which require an industrial establishment to comply with ISRA include, but are not limited to, sale of property; sale of business; cessation of operations and other transactions involving the transfer of stock, partnership interest, membership interest or assets. If an Industrial Establishment is not engaged in a transaction defined at N.J.A.C. 7:26B-1.4 as a “Change of ownership,” “Closing operations” or “Transferring ownership or operations,” then ISRA does not apply. See also N.J.A.C. 7:26B-2.

As stated above, the filing of this affidavit is a voluntary act and is not required by statute or regulation. With that in mind, affidavits should not be submitted for operations or transactions that are clearly not subject to the Act. This includes, but is not limited to, the refinance of a mortgage obtaining a second mortgage or obtaining a construction loan (regardless of the use of the property), and any transaction involving the following: (a) Residential properties, including single family dwellings, multifamily apartment buildings and nursing homes; (b) Undeveloped lands not contiguous to and owned by an Industrial Establishment; (c) Agricultural land, including Farms; (d) Restaurants, Bars and Liquor Stores; (e) Medical Offices, Hospitals, and Veterinary Offices; (f) Professional Offices of Attorneys, Accountants, Engineers, Architects, Consultants and Banks; (g) Retail Gasoline Stations, (h) Automobile Repair Shops, Auto-Body Shops or Car Dealerships; (i) Dry Cleaning Operations and Laundromats; (j) Garden/Home Improvement Centers, Lumber Yards, Hardware Stores; (k) Hair or Beauty Salons; (l) Motels/Hotels or Boarding Houses; (m) Retail Stores, **EXCLUDING** Print Shops.

This affidavit can be used to determine if a specific operation is an industrial establishment or to determine if a specific business transaction is a ***“Change of ownership”, “Closing operations” or “Transferring ownership or operations.”*** The attached affidavit should be completed by the owner or operator of the property or business for which a written applicability determination is requested. The Department will not accept an affidavit completed by a prospective purchaser.

Once completed, each affidavit must be signed by the owner or operator, notarized in accordance with N.J.A.C. 7:26B-1.6, and submitted to the following address:

NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION
BUREAU OF RISK MANAGEMENT, INITIAL NOTICE & CASE ASSIGNMENT
ISRA Applicability Section
P.O. Box 432
Trenton, New Jersey 08625-0432

If applications are being sent via express mail (FedEx, UPS, etc.), the proper address is as follows:

BUREAU OF RISK MANAGEMENT, INITIAL NOTICE & CASE ASSIGNMENT
ISRA Applicability Section
401 East State Street, 5th Floor
Trenton, New Jersey 08625-0432

Pursuant to N.J.A.C. 7:26B-8, a certified check, attorney check, money order or personal check for \$200.00 (**non-refundable**), payable to "TREASURER, STATE OF NEW JERSEY", must be submitted with each written request for an applicability determination. If requests by tenants are submitted under separate cover, a \$200.00 fee for each tenant must be submitted. However, only one \$200.00 fee is required if the affidavits are submitted as a single package. If properties are geographically separated (noncontiguous), separate applications and fees are required. If you have general questions concerning the preparation of the application, please call 609-984-3081 or 609-633-1464.

ISRA Resources

For copies of N.J.A.C. 7:26B Appendix C which includes a complete list of ISRA applicable NAICS numbers see, <http://www.nj.gov/dep/srp/regs/isra/naics.htm>

To determine your NAICS number please refer to the “Official NAICS Page” at www.census.gov/epcd/naics02 or contact the NJ Department of Labor at 609-292-2633

For Appendix A of the New Jersey Spill Compensation and Control Act (N.J.A.C.7:1E), please refer to www.nj.gov/dep/rpp/download/appenda.pdf

For copies of the North American Industry Classification System Manual contact the National Technical Information Service at 1-800-553-6847 or (703) 605-6000

NOTE: Please read the entire introduction before completing this application. It contains important information about this form and the ISRA process. All sections of this application shall be completed or it will be returned unprocessed.

PLEASE TYPE OR PRINT

Date _____

A. Determination of Applicability/Nonapplicability should be mailed to the following:

Name (Mr./Mrs./Ms.) _____
 Company _____
 Address _____
 City or Town _____
 State _____ Zip Code _____ Tele. No. _____

B. Property Location for which request is being submitted:

Street Address _____
 Tax Block(s) _____ Tax Lot(s) _____
 Municipality _____ County _____

C. Transaction for which the Applicability/Nonapplicability Determination is requested: (Check appropriate transaction). * Please attach a detailed description of these transactions.

- | | |
|---|--|
| 1. <input type="checkbox"/> Sale of Property | 7. <input type="checkbox"/> Corporate Merger* |
| 2. <input type="checkbox"/> Sale of Business | 8. <input type="checkbox"/> Partnership Situation Change * |
| 3. <input type="checkbox"/> Business Ceasing Operations | 9. <input type="checkbox"/> Intra Family |
| 4. <input type="checkbox"/> Sale of Stock in a Corporation* | 10. <input type="checkbox"/> Corporate Reorganization |
| 5. <input type="checkbox"/> Condemnation | 11. <input type="checkbox"/> Sale of Assets |
| 6. <input type="checkbox"/> Bankruptcy | |
| <input type="checkbox"/> Other: (Explain) _____ | |

If a sale is pending, provide the date of the Planned Transaction: _____

D. Current Owner of the Property for which an Applicability/Nonapplicability Determination is requested:

Name _____
 Street Address _____
 Municipality _____ State _____
 Zip Code _____ Tele No. _____

E. Purchaser: (not required if the transaction is only a cessation of operations)

Name _____
 Address _____
 Municipality _____ State _____ Zip Code _____

F. Please provide the name of each Business/Industrial Establishment that operated at the address listed in Question B on or after December 31, 1983. Include the dates of operations and the applicable NAICS number. Note, if the applicant is a tenant and the transaction affects only its operation (i.e., a cessation of operations or sale of business), it is acceptable to only list the tenant's business and seek a determination regarding the applicability of ISRA to the operation of the current business. Please read the summarized definition of Industrial Establishment on the first page of this application before going any further. (Attach additional sheets if necessary.)

Name of Business/Industrial Establishment	Dates of Operation		NAICS # 6 Digits
	From MM/YY	To MM/YY	

G. Operations:

1.) The property owner and/or operator must completely describe in detail the operations and processes conducted at the site for each business listed in F above occupying any part of the property since December 31, 1983. The description should include the nature of each operator's business and, specifically, how the site is used in connection with such business. If the application only pertains to a tenant's transaction, simply describe the tenant's operations. (Attach additional sheets, if necessary.)

2.) If the property described above is vacant land, does the owner described in D above own contiguous property? ☐ Yes ☐ No (If yes, please describe onsite operations at the contiguous property.)

H. History:

1. Provide the name and address of all previous Owners and dates of ownership since December 31, 1983. (Attach additional sheets, if necessary.)

<u>Name</u>	<u>Address</u>	<u>Date</u>

2. Is this site currently or has the site previously been the subject of any other ECRA or ISRA review? ☐ Yes ☐ No. If yes, please provide the case or application number _____.

I. Hazardous Substances or Wastes: Answer this question only if the facility or business has a subject NAICS number as listed in Appendix C of the ISRA rule and the applicant is seeking a determination of ISRA non applicability based on the absence of any hazardous substances or wastes being generated, manufactured, used or stored at the listed site. Be advised that heating oil is a hazardous substance. *. Check here if this question does not apply and go to section **J**.

*Note: Heating oil, formerly contained in historic above or below ground tanks, is not a hazardous substance for the purpose of this section, if the tanks were removed with the Department's no further action approval. Applicants who closed tanks without Departmental oversight are subject to ISRA and should file a General Information Notice within 5 days of a triggering event. Was the building(s) ever heated by oil? Yes No . If yes, please provide a copy of the no further action determination to support your request.

By signing the certification at section **N** of this application, I certify that no hazardous substances or wastes, as defined at N.J.A.C. 7:1E, were **ever** used during the ownership or operations of the business(s) listed in Question F above. The Signatory on the certification shall initial here .

Sections **J-L** below are for the use of applicants who seek a determination as to whether a specific transaction is a **"Change of ownership," "Closing operations" or "Transferring ownership or operations."** Should the applicants' NAICS number not be among those listed at N.J.A.C. 7:26B, Appendix C, as subject to ISRA, then these sections should be disregarded. Please proceed to section **M**.

J. If the applicant is seeking a determination for a transfer of ownership or operations involving an evaluation of whether the indirect owner's assets would have been available for remediation please provide the following information as an attachment to this application:

1. Identify each direct owner and each indirect owner of the industrial establishment;
2. Identify whether the indirect owner has exerted fiscal control over the direct owner or industrial establishment including, but not limited to, imposing any restriction upon the financing, borrowing, budgeting, dividends and cash management of the direct owner or industrial establishment;
3. List all persons that are officers and directors for both the direct owner and the indirect owner of the industrial establishment to establish whether the officers, directors and employees of the indirect owner constitute a majority of the directors of the direct owner or the industrial establishment or such smaller number of directors as is sufficient to effectively direct the management and policies of the direct owner or the industrial establishment;
4. Identify whether the officers, directors and employees of the indirect owner are involved in the day-to-day operations of the direct owner or the industrial establishment and whether the day-to-day operations of the direct owner or the industrial establishment are relevant to the generation, manufacture, handling, storage or disposal of hazardous substances or hazardous wastes;
5. Identify whether the indirect owner has the ability to control the activities, policies or decisions of the direct owner or the industrial establishment and whether these activities, policies or decisions are relevant to the generation, handling, storage or disposal of hazardous substances or hazardous wastes; and
6. The applicant shall provide any additional information which may be relevant to this determination.

K. If the applicant is seeking a determination for a transfer of ownership or operations involving an evaluation of whether the subject transaction is a corporate reorganization not substantially affecting the ownership of the industrial establishment, please provide the following information as an attachment to this application:

1. Identify each direct owner of the industrial establishment, indirect owner of the industrial establishment and the organizational structure of the person, prior to, and after the proposed transaction;

2. Identify whether the transaction involves the transfer of stock and/or assets, solely among persons under common ownership or control and/or shareholders or owners of such persons. A transaction between related corporations that prepare financial statements or tax returns on a consolidated basis will be presumed to be among corporations under common ownership or control;

3. Identify:

i. Whether the transaction will result in an aggregate diminution of more than 10 percent in the net worth of the industrial establishment or of the person directly owning or operating the industrial establishment. The applicant must include all transactions occurring within the five-year period preceding the date of the proposed transaction in the calculation of "aggregate diminution"; or

ii. Whether there is an equal or greater amount in assets that is available for the remediation of the industrial establishment before and after the transaction(s);

4. Identify whether the transferee has a registered agent in New Jersey who is authorized to accept service on behalf of the transferee. If so, the applicant shall provide the name and address of the registered agent;

5. Identify whether the assets of an indirect owner transferring any direct or indirect interest in the stock or assets of the industrial establishment would have been available for the remediation of the industrial establishment based upon the criteria set forth in (b) above; and

6. Provide any additional information which may be relevant to this determination.

L. If the applicant is seeking a determination for a transfer of ownership or operations involving an evaluation of whether the subject transaction is a transfer of a controlling interest in the industrial establishment, please provide the following information as an attachment to this application.

1. Identify whether the transferor is transferring more than 50 percent of the voting or ownership interest in the direct owner or operator or indirect owner of an industrial establishment. There is a rebuttable presumption that any person who has more than 50 percent of the voting or ownership interest holds a controlling interest in that direct owner or operator or indirect owner; or

2. Identify whether the transferor is transferring 50 percent or less of a voting or ownership interest in the direct owner or operator or indirect owner of an industrial establishment and:

i. Identify whether the transferor possess(es), directly or indirectly, the power to direct or cause the direction of the management and policies of the entity; and

ii. Identify whether a voting trust, shareholder's agreement, proxy or similar agreement exists which would enable the transferor to elect a majority of the board of directors or a smaller number of directors sufficient to effectively direct or cause the direction of the management and policies of the entity; and

3. Provide any additional information which may be relevant to this determination .

M. Right of Entry: Pursuant to the Industrial Site Recovery Act rules (N.J.A.C. 7:26B-1.9), by the submission and certification of this document, I give my consent to the Department and or its authorized representatives to enter the Industrial Establishment, upon the presentation of credentials, to inspect the site to verify the accuracy of this application. _____ (The signatory on the certification shall initial here)

CERTIFICATION:

The following certification shall be signed by a duly authorized person pursuant to the requirements of N.J.A.C. 7:26B-1.6(e) as follows.

- a. For a corporation, by a principal executive officer of at least the level of vice president;
- b. For a partnership or sole proprietorship, by a general partner or the proprietor, respectively; or
- c. For a municipality, State, Federal or other public agency, by either a principal executive officer or ranking elected official.

N. I certify under penalty of law that I have personally examined and am familiar with the information submitted in this application and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, to the best of my knowledge, the submitted information is true, accurate and complete. I am aware that there are significant civil penalties for knowingly submitting false, inaccurate or incomplete information and that I am committing a crime of the fourth degree if I make a written false statement which I do not believe to be true. I am also aware that if I knowingly direct or authorize the violation of N.J.S.A. 13:1K-6, et seq., I am personally liable for the penalties set forth at N.J.S.A. 13:1K-13.

Typed/Printed Name _____ Title _____

Signature _____ Date _____

Sworn to and Subscribed Before Me

on this _____

Date of _____ 19 _____

Notary

Have you enclosed a check or money order for \$200? ☐ Yes ☐ No

Check Number _____

Have you included the original signature of the owner or operator? ☐ Yes ☐ No

Has the certification been properly notarized? ☐ Yes ☐ No